IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6919 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KISHAN SUKHABHAI VAGHRI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6919 of 2001

MS SUBHADRA G PATEL for Petitioner No. 1

MRS HANSABEN PUNANI, AGP for Respondents No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 28/12/2001

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act

of 1985') by the order dated 26-6-2001 passed by the Police Commissioner, Rajkot City, and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner and also learned AGP. Also perused the material on record. According to learned advocate for the petitioner, for passing the order of detention the detaining authority has relied upon five offences registered against the petitioner at `B' Division Police Station, Rajkot City. It is submitted that though wife of the detenu has made a representation on 19-7-2001, same is not decided by the authority and no communication has been received by him. It appears that no affidavit has been filed by the authorities justifying the grounds mentioned along with the order of detention. It has been held in a judgment delivered by this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and Ors. reported in 2000(1) G.L.H. 393 as under:

> "Before parting with the matter, we may observe that recently, we have come across few cases wherein no counter-affidavits are filed by the respondents. It is settled law that whenever an order of detentiion is challenged by a detenu or by his "next friend", it is the duty of the authorities to justify the action by filing counter-affidavit preferably by the detaining authority himself, unless there are circumstances which may justify filing of affidavit by an officer or authority other than the detaining authority".

3. Since no affidavit has been filed either by the detaining authority or by the State authority justifying satisfactorily the action taken by the detaining authority in passing the order of detention, the order of detention is illegal and the same cannot be sustained.

4. The petition is allowed. The impugned order of detention dated 26-6-2001 passed against the detenu is hereby quashed and set aside. The detenu Kishan Sukhabhai Vaghri is ordered to be set at liberty

forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(R.P.DHOLAKIA,J.)

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